

GOVERNMENT PROPOSED JURY INST. NO. 66

Concealing a Material Fact -- Offense Charged
(First Clause)

The indictment sets forth _____ counts or charges.

Count ____ of the indictment charges that on or about _____, 19__, in the District of _____, the defendant, _____, knowingly and willfully concealed or covered up a material fact from a department or agency of the United States, the Internal Revenue Service, by _____.

18 U.S.C. § 1001

Devitt, Blackmar and O'Malley, **Federal Jury Practice and Instructions** (4th Ed. 1990), Section 37.01 (modified)

GOVERNMENT PROPOSED JURY INST. NO. 67

Making a False, Fictitious or Fraudulent
Statement -- Offense Charged
(Second Clause)

The indictment sets forth _____ counts or charges.

Count ____ of the indictment charges that on or about _____, 19__, in the District of _____, the defendant, _____, knowingly made a false, fictitious, or fraudulent statement or representation concerning a material fact within the jurisdiction of a department or agency of the United States, the Internal Revenue Service, by _____.

18 U.S.C. § 1001

Devitt, Blackmar and O'Malley, **Federal Jury Practice and Instructions** (4th Ed. 1990), Section 37.05 (modified)

GOVERNMENT PROPOSED JURY INST. NO. 68

Making or Using Any False Writing or Document -- Offense Charged
(Third Clause)

The indictment sets forth _____ counts or charges.

Count ____ of the indictment charges that on or about _____, 19__, in the District of _____, the defendant, _____, knowingly and willfully made or used a false writing or document containing a false, fictitious, or fraudulent statement or entry concerning a material matter within the jurisdiction of a department or agency of the United States, the Internal Revenue Service, by

_____.

18 U.S.C. § 1001

Devitt, Blackmar and O'Malley, **Federal Jury Practice and Instructions** (4th Ed. 1990), Section 37.09 (modified)

GOVERNMENT PROPOSED JURY INST. NO. 69

Statute Defining Offense

Section 1001 of Title 18 of the United States Code provides, in part, as follows:

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully [*falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statements or representations or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry,*]¹ shall be guilty of an offense against the laws of the United States.

18 U.S.C. § 1001

Devitt, Blackmar and O'Malley, *Federal Jury Practice and Instructions* (4th Ed. 1990), Sections 37.02; 37.06; 37.10

NOTE

1 Select the appropriate language for the offense charged in the indictment.

GOVERNMENT PROPOSED JURY INST. NO. 70The Essential Elements of the Crime Charged

In order to sustain its burden of proof for the crime of knowingly and willfully _____ 1 an agency of the federal government as charged in Count ____ of the indictment, the government must prove the following four 2 essential elements beyond a reasonable doubt:

One: The defendant _____ knowingly [**concealed a material fact by any trick, scheme or device; made a false, fictitious, or fraudulent statement or representation to the government; made or used a false writing or document containing a false, fictitious, or fraudulent statement**] as detailed in the indictment;

Two: In so doing, the defendant _____ acted willfully;

Three: The [**fact concealed; statement; or writing or document**] was material; 3 and

Four: The subject matter involved was within the jurisdiction of any department or agency of the United States.

The court must decide Element Three concerning materiality 4 and Element Four concerning the jurisdiction of the United States.

You are to decide Element One, concerning whether the defendant _____ knowingly [**concealed a material fact by any trick, scheme or device; made a false, fictitious, or fraudulent statement or representation to the government; made or used a false writing or document containing a false, fictitious, or fraudulent statement**], and Element Two, whether in this regard the defendant _____ acted willfully.

Devitt, Blackmar and O'Malley, **Federal Jury Practice and Instructions** (4th Ed. 1990), Sections 37.03; 37.07; 37.11

NOTES

1 Choose the appropriate language depending on the crime charged: concealing a material fact from; making a false statement to; or making or using a false writing or document.

2 If the offense charged relates to the first clause, concealing a material matter, there is an additional fifth element -- "the defendant, _____, had a legal duty to disclose the fact concealed." Yet, see the law of your particular circuit as to whether the judge must instruct the jury as to this particular element. See Section 24.04, *supra*

3 The Second Circuit has held that materiality is not an element of the offense relating to either the second or third clauses of the statute; and therefore, if the offense charged does not relate to the first clause of Section 1001, concealing a fact, the materiality element should be deleted from this proposed charge. See Sections 24.03 and 24.06, *supra*

4 The Ninth and Tenth Circuits have held that materiality is a question for the jury to decide. See Section 24.06, *supra*. Accordingly, an instruction on the definition of materiality is required. See **Manual of Model Jury Instructions**, Ninth Circuit, Instruction No. 8.20 (1989)

GOVERNMENT PROPOSED JURY INST. NO. 72The Essential Elements of the Crime Charged

Title 18, United States Code, Section 1001, makes it a crime for anyone to knowingly and willfully make a false or fraudulent statement to a department or agency of the United States.

For you to find the defendant guilty of this crime, you must be convinced that the government has proved each of the following beyond a reasonable doubt:

First: That the defendant made a false statement [***gave a false document***] to [***name department or agency of United States government***];

Second: That the defendant made the statement intentionally, knowing that it was false; and

Third: That the defendant made the false statement for the purpose of misleading the [***name department or agency of United States government***].

It is not necessary to show that the [***name department or agency of United States government***] was in fact misled.

If you find that the government has proved these things, you do not need to consider whether the false statement was material, even though that language is used in the indictment. This is not a question for the jury to decide.

Pattern Jury Instructions, Criminal Cases, Fifth Circuit,
Instruction No. 2.46 (1990)

GOVERNMENT PROPOSED JURY INST. NO. 73

The Essential Elements of the Crime Charged
Concealing a Material Fact

To sustain the charge of concealing a material fact, the government must prove the following propositions:

First, the defendant [**concealed; covered up**] a fact by trick, scheme or device;

Second, the fact was material;

Third, the defendant did so knowingly and willfully; and

Fourth, the material fact related to a matter within the jurisdiction of a federal department or agency.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, then you should find the defendant guilty.

If, on the other hand, you find from your consideration of all the evidence that any of these propositions has not been proved beyond a reasonable doubt, then you should find the defendant not guilty.

Federal Criminal Jury Instructions, Seventh Circuit, Volume III, Chapter 47, p. 49 (1986)

GOVERNMENT PROPOSED JURY INST. NO. 74The Essential Elements of the Crime Charged
Making a False Statement or Representation

To sustain the charge of making a [**false; fictitious; fraudulent**] [**statement; representation**], the government must prove the following propositions:

First, the defendant made a [**false; fictitious; fraudulent**] [**statement; representation**];

Second, the [**statement; representation**] was material;

Third, the [**statement; representation**] was made knowingly and willfully; and,

Fourth, the [**statement; representation**] was made in a matter within the jurisdiction of a department or agency of the United States.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, then you should find the defendant guilty.

If, on the other hand, you find from your consideration of all the evidence that any of these propositions has not been proved beyond a reasonable doubt, then you should find the defendant not guilty.

Federal Criminal Jury Instructions, Seventh Circuit, Volume III, Chapter 47, p. 50 (1986)

GOVERNMENT PROPOSED JURY INST. NO. 75The Essential Elements of the Crime Charged
Making or Using a False Writing or Document

To sustain the charge of [*making; using*] a false [*writing; document*] knowing it to contain any [*false; fictitious; fraudulent*] [*statement; entry*], the government must prove the following propositions:

First, the defendant [*made; used*] a false [*writing; document*];

Second, the defendant knew the [*writing; document*] contained a [*false; fictitious; fraudulent*] [*statement; entry*];

Third, the [*statement; entry*] was material;

Fourth, the defendant [*made; used*] the [*document; writing*] knowingly and willfully; and

Fifth, the defendant [*made; used*] the [*document; writing*] within the jurisdiction of a federal department or agency.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, then you should find the defendant guilty.

If, on the other hand, you find from your consideration of all the evidence that any of these propositions has not been proved beyond a reasonable doubt, then you should find the defendant not guilty.

Federal Criminal Jury Instructions, Seventh Circuit, Volume III, Chapter 47, p. 51 (1986)

GOVERNMENT PROPOSED JURY INST. NO. 76

The Essential Elements of the Crime Charged
Concealing a Material Fact From a Government Agency

The crime of [**falsifying**][**concealing**] a fact from a government agency, as charged in [**Count _____of**] the indictment, has three essential elements, which are:

One, the defendant [**falsified**][**concealed**] [**describe material fact falsified or concealed, (e.g. the true purchase price of the ABC Building)**] in [**describe the matter within agency jurisdiction, (e.g. a loan closing statement submitted to XYZ Association)**];

Two, the defendant did so by use of a [**trick**] [**scheme**] [**device**], that is, a course of action intended to deceive others; and

Three, the defendant did these acts knowingly, voluntarily and intentionally.

[**Describe matter, e.g. loan closing statements submitted to the XYZ Association**] are matters within the jurisdiction of the [**name agency, e.g. Internal Revenue Service**] which is an agency of the United States.

[**The materiality of the fact[s] alleged to be [falsified] [concealed] is not a matter with which you are to be concerned and should not be considered by you in determining the guilt or innocence of the defendant.**]

GOVERNMENT PROPOSED JURY INST. NO. 77The Essential Elements of the Crime Charged
False Statement to Government Agency

The crime of making a [**false**] [**fictitious**] [**fraudulent**] [**statement**] [**representation**] in a matter within the jurisdiction of a government agency, as charged in [**Count** _____ **of**] the indictment, has three essential elements which are:

One, the defendant knowingly made a [**false**] [**fictitious**] [**fraudulent**] [**statement**] [**representation**];

Two, the [**statement**] [**representation**] was made voluntarily and intentionally; and

Three, the [**statement**] [**representation**] was made in [**describe matter within agency jurisdiction, e.g. a federal income tax return**].

[**Statements**] [**representations**] in [**describe matter, (e.g. income tax returns)**] are matters within the jurisdiction of the [**name agency, (e.g. Internal Revenue Service)**] which is an agency of the United States.

[**A statement is "false" or "fictitious", if untrue when made, and then known to be untrue by the person making it or causing it to be made.**] [**A statement or representation is "fraudulent", if known to be untrue, and made or caused to be made with the intent to deceive the Government agency to whom it was submitted.**]

[**The materiality of the [statement] [representation] alleged to be [false] [fictitious] [fraudulent] is not a matter with which you are concerned and should not be considered by you in determining the guilt or innocence of the defendant.**]

GOVERNMENT PROPOSED JURY INST. NO. 78The Essential Elements of the Crime Charged
Using a False Document

The crime of [*making*] [*using*] a false [*writing*] [*document*] in a matter within the jurisdiction of a government agency, as charged in [*Count* _____ *of*] the indictment, has three essential elements, which are:

One, the defendant knowingly [*made*] [*used*] a [*false*] [*fictitious*] [*writing*] [*document*] in [*describe matter within agency jurisdiction, (e.g. support of claimed deductions during an audit conducted by the Internal Revenue Service)*];

Two, at the time the defendant did so, he knew that the [*writing*] [*document*] contained a [*false*] [*fictitious*] [*fraudulent*] [*statement*] [*entry*]; and

Three, the defendant did these acts knowingly, voluntarily and intentionally.

[*Describe matter, e.g. using a document in support of claimed deductions during an audit*] is a matter within the jurisdiction of the [*name agency, (e.g. Internal Revenue Service)*] which is an agency of the United States.

[*The materiality of the [writing] [document] alleged to be [false] [fictitious] [fraudulent] is not a matter with which you are concerned and should not be considered by you in determining the guilt or innocence of the defendant.*]

GOVERNMENT PROPOSED JURY INST. NO. 79The Essential Elements of the Crime Charged

The defendant is charged in [Count _____ of] the indictment with knowingly and willfully [***making a false statement***] [or] [***using a document containing a false statement***] in a matter within the jurisdiction of a government agency or department in violation of Section 1001 of Title 18 of the United States Code. In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant [***made a false statement***] [***used a writing which contained a false statement***] in a matter within the jurisdiction of the [***e.g., United States Treasury Department***];

Second, the defendant knew that the statement was untrue; and

Third, the statement was material to the [***United States Treasury Department***]'s activities or decisions.

A statement is material if it could have influenced the agency's decisions or activities.

Manual of Model Jury Instructions, Ninth Circuit (1992 Ed.),
Section 8.20

GOVERNMENT PROPOSED JURY INST. NO. 80The Essential Elements of the Crime Charged

Title 18, United States Code, Section 1001, makes it a Federal crime or offense for anyone to willfully make a false or fraudulent statement to a department or agency of the United States.

The defendant can be found guilty of that offense only if all of the following facts are proved beyond a reasonable doubt:

First: That the defendant knowingly [***made a false statement***] or [***made or used a false document***] in relation to a matter within the jurisdiction of a department or agency of the United States, as charged;

Second: That the [***false statement***] or [***false document***] related to a material matter; and

Third: That the defendant acted willfully with knowledge of the falsity.

A [***statement***] or [***document***] is "false" when [***made***] or [***used***] if it is untrue and is then known to be untrue by the person [***making***] or [***using***] it. It is not necessary to show, however, that the government agency was in fact deceived or misled.

[*The Internal Revenue Service, Department of the Treasury, is an "agency of the United States," and the filing of documents with that agency to affect a matter or investigation concerning federal income taxes is a matter within the jurisdiction of that agency.*]¹

The [***making of a false statement***] or [***use of a false document***] is not an offense unless the falsity relates to a "material" fact. However, the issue of materiality is not submitted to you for your decision but it is a matter to be determined by the court. You are instructed that the alleged facts, charged in the indictment as having been falsified, would be material facts.

Pattern Jury Instructions, Criminal Cases, Eleventh Circuit (1985 Ed.), Offense Instructions, Instruction No. 29, p. 128

NOTE

1 Language suggested for use when the Internal Revenue Service is involved.

GOVERNMENT PROPOSED JURY INST. NO. 82

"Conceals or Covers Up by Any Trick, Scheme, or Device -- Defined"
(First Clause)

The phrase "conceals or covers up by any trick, scheme, or device" means any deliberate plan or course of action, or any affirmative act, or any knowing omission designed to deceive others by preventing or delaying the discovery of information.

Devitt, Blackmar and O'Malley, ***Federal Jury Practice and Instructions*** (4th Ed. 1990), Section 37.04

GOVERNMENT PROPOSED JURY INST. NO. 83False, Fictitious or Fraudulent Statements or Representations

A false, fictitious statement or representation is an assertion which is untrue when made or when used and which is known by the person making it or using it to be untrue.

A fraudulent statement or representation is an assertion which is known to be untrue and which is made or used with the intent to deceive.

Devitt, Blackmar and O'Malley, ***Federal Jury Practice and Instructions*** (4th Ed. 1990), Section 37.08; See also ***Manual of Model Criminal Jury Instructions***, Eighth Circuit, Instruction No. 6.18.1001B (1992); ***Pattern Jury Instructions, Criminal Cases***, Eleventh Circuit, Instruction No. 29 (1985)

GOVERNMENT PROPOSED JURY INST. NO. 84

False, Fictitious or Fraudulent Statements or Representations

A statement is false or fictitious if untrue when made and then known to be untrue by the person making or causing it to be made.

A statement or representation is fraudulent if known to be untrue, and made or caused to be made with intent to deceive.

Federal Criminal Jury Instructions, Seventh Circuit, Volume III, Chapter 47, pp. 54-5 (1986)

GOVERNMENT PROPOSED JURY INST. NO. 85Makes or Uses Any False Writing or Document

The phrase "makes or uses any false writing or document" means to create, to bring into existence, or to submit, or to file some type of form, report, or letter, of any kind, which is not true.

A false statement or representation is an assertion which is untrue when made or when used and which is known by the person making it or using it to be untrue.

A fraudulent statement or representation is an assertion which is known to be untrue and which is made or used with the intent to deceive.

Devitt, Blackmar, and O'Malley, **Federal Jury Practice and Instructions** (4th Ed. 1990), Section 37.12; see also **Manual of Criminal Jury Instructions**, Eighth Circuit, Instruction No. 6.18.1001C (1992); **Pattern Jury Instructions, Criminal Cases**, Eleventh Circuit, Instruction No. 29 (1985)

GOVERNMENT PROPOSED JURY INST. NO. 86Department or Agency of the United States

The [***Internal Revenue Service***] is an "agency of the United States"; and statements contained in [***e.g., an affidavit submitted to an employee of the Internal Revenue Service to affect a matter or investigation concerning federal income taxes***] are matters within the jurisdiction of an agency of the United States.¹

Devitt and Blackmar, ***Federal Jury Practice and Instructions*** (3d Ed. 1977), Section 28.03 (modified for a tax case)

NOTE

¹ Whether a matter is within the jurisdiction of a federal agency or department is a question of law. It is uniformly conceded that the Internal Revenue Service, Department of the Treasury, is a department or agency of the United States within the meaning of 18 U.S.C. § 1001. See Section 24.05, *supra*.

GOVERNMENT PROPOSED JURY INST. NO. 87"Knowingly" - Defined

A person acts "knowingly", as that term is used in these instructions, if that person acts consciously and with awareness and comprehension and not because of ignorance, mistake or misunderstanding or other similar reason.

A person who makes, submits, or uses a statement or writing which that person believes to be truthful does not "knowingly" make, submit, or use a false, fictitious, or fraudulent statement.

Devitt, Blackmar, and O'Malley, ***Federal Jury Practice and Instructions*** (4th Ed. 1990), Section 37.13; see also ***Federal Criminal Jury Instructions of the Seventh Circuit***, Instruction No. 6.04 (1980).

GOVERNMENT PROPOSED JURY INST. NO. 88

"Willfully" - Defined

A person acts "willfully", as that term is used in these instructions, when that person acts deliberately, voluntarily, and intentionally.

Devitt, Blackmar, and O'Malley, ***Federal Jury Practice and Instructions*** (4th Ed. 1990), Section 37.14.

GOVERNMENT PROPOSED JURY INST. NO. 89The Exculpatory No Defense **1**

There are certain exceptions to the federal law that prohibit the making of false or fraudulent statements to the government.

If you find, therefore, that the defendant _____ knowingly and willfully made a false statement to a government agent, but that the following four elements have been met, you may not convict the defendant for the charges contained in Count __ of the indictment:

One: The statement was made in response to a question or questions initiated by the government during a criminal investigation; and

Two: A truthful answer to the question or questions would have incriminated the defendant; and

Three: In making the false or fraudulent statement, the defendant merely denied knowledge of or participation in criminal conduct rather than created a misleading story calculated to subvert the government's legitimate functions; and

Four: The false or fraudulent statement was not made regarding a claim that the defendant was pursuing against the government or regarding a claim which the government was pursuing against the defendant.

Devitt, Blackmar and O'Malley, **Federal Jury Practice and Instructions** (4th Ed. 1990), Section 37.17

NOTE

1 This is a judicially created rule precluding liability under 18 U.S.C. § 1001. Refer to Section 24.08[1], *supra* to determine whether such an instruction should be given and the appropriate language in your particular circuit.